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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/016,472	12/10/2001	Anthony J. Grzesiak	DKT 00065A (BW1-00056)	4573

7590 10/14/2003

PATENT DOCKET ADMINISTRATOR-BORGWARNER INC.  
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EXAMINER

BURCH, MELODY M

ART UNIT	PAPER NUMBER
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3683

DATE MAILED: 10/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

10/016,472

Applicant(s)

GRZESIAK ET AL.

Examiner

Melody M. Burch

Art Unit

3683

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 September 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1,4-9,11-15 and 18-23.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_.

Continuation of 3. Applicant's reply has overcome the following rejection(s): 112 rejection of claim 19 as well as the specification and claim objections.

Continuation of 5. does NOT place the application in condition for allowance because: Applicant arguments are not persuasive. Applicant argues that the Reichert et al. reference fails to show or suggest the servo providing a rapid activation of the linkage during a first stage and a controlled compression and expansion of the brake band during a second stage.

Examiner notes that Applicant's invention includes a servo providing a rapid activation during a first stage using a small apply piston 62 that is arranged closest to the linkage and that promotes the initial brake application movement of the linkage. The servo of Applicant's invention also provides a larger apply piston 64 for more finite adjustments of the band pressure during a second stage as described on pg. 7 of Applicant's specification.

In comparison, Examiner notes that Reichert et al. show a small apply piston 9 that is arranged closest to the linkage and that promotes the initial brake application movement of the linkage. Reichert et al. also show a larger apply piston 3 for more finite adjustments of the band pressure during a second stage. It is evident that Reichert et al. describe the invention to the same extent as Applicant.

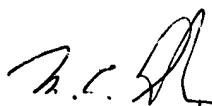
Similarly, since the Hisano et al. reference shows a small apply piston 43 arranged closest to the linkage that promotes the initial brake application movement to the linkage and shows a larger apply piston 44 for more finite adjustments of the brake band pressure to the same extent as Applicant's.

Examiner maintains that since both the Reichert and Hisano reference show small and large apply pistons arranged in the same fashion as that of the instant invention, the brake band mechanisms of Reichert and Hisano function to include the rapid and controlled activation stages to the same extent as Applicant's invention. The burden shifts to Applicant to show that despite the same structures, the mechanisms of Reichert and Hisano function differently. Applicant argued that "Reichert et al. appears to disclose that the supposed first stage actuation of the hydraulic servo is accomplished slowly". Similarly, Applicant argued that "Hisano et al. appears to disclose that the supposed first stage actuation of the hydraulic servo is accomplished slowly or weakly". However, nowhere in the Reichert et al. or Hisano et al. references is it stated that the first stage actuation of the hydraulic servo is accomplished slowly or weakly.

Applicant also argues that Reichert et al. and Hisano et al. do not render claims 1, 7, and 8 obvious. Examiner notes, however, that claims 1, 7, and 8 were rejected using the Reichert et al. and Hisano et al. references only under 35 USC 102.

Accordingly, the rejections set forth in paper no. 10 mailed 7/18/03 have been maintained.

mmB  
10/7/03

  
10/5/2003  
MATTHEW C. GRAHAM  
PRIMARY EXAMINER  
GROUP 310